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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Petition for Waiver of the
Benchmark Settlement Rate
for Guyana.

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IB Docket No. 96-261
DA 01-1714

**COMMENTS OF AT&T CORP.
AND ITS AFFILIATES CONCERT GLOBAL NETWORKS USA L.L.C. AND
CONCERT GLOBAL NETWORK SERVICES LTD.**

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Dated: September 7, 2001.

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SUMMARY

This request for a waiver of the \$0.23 benchmark rate for Guyana meets none of the requirements for an exemption to Commission rules and should be rejected promptly. ATN demonstrates no new facts or circumstances justifying a waiver. Instead, the petition should be seen for what it is -- an attempt to challenge once again the basic tenets of the *Benchmarks Order* under the guise of a specific waiver request. This is readily apparent because ATN does nothing more than repeat yet again the arguments that the Commission and the D.C. Circuit have already rejected -- that U.S. consumers should be required to pay huge above-cost subsidies to foreign monopoly carriers that claim to need these subsidies to fund their foreign infrastructure.

The “white paper” attached to ATN’s petition makes clear there are no special circumstances applicable to Guyana that do not equally apply to many other foreign countries by requesting exemptions from benchmarks for *all* low-income countries using settlement rates for infrastructure investment. As the International Bureau has emphasized, such broadly applicable changes are not the proper subject of a waiver request. And, as ATN’s “white paper” surprisingly admits, benchmark waivers would lead to increased foreign carrier reliance on U.S. consumer subsidies in the future.

ATN also makes no showing that a waiver would benefit the public interest or be consistent with the policies underlying the *Benchmarks Order*. In stark opposition to ATN’s claims here, the Commission found in the *Benchmarks Order* that disproportionate U.S. consumer subsidies of foreign universal service programs harm rather than promote the U.S. public interest. ATN’s own chief authority, the recent Commission order in *Mescalero Apache Telecom*, states that, as set forth in Section 254 of the Telecommunications Act, the Commission’s universal service mandate applies to “consumers in all regions *of the nation*.”

Contrary to ATN's claims in this proceeding, that mandate does not extend to consumers in foreign countries, or otherwise require above-cost U.S. settlement rates to subsidize network investment in foreign countries.

While the Commission recognized the difficulties many carriers, particularly in developing countries, would face in implementing benchmark rates, and therefore established higher benchmark rates and longer transition periods for low-income countries, its paramount concern was "to ensure reasonable rates for U.S. consumers" and to promote competition in the U.S. market. Achievement of that objective requires the adoption of benchmark rates for all countries, including Guyana, so that all U.S. consumers, including the "substantial Guyanese immigrant population residing in the United States" (Petition, p. 23), may enjoy lower rates to all destinations, including Guyana, as quickly as possible.

Moreover, Guyana has maintained the same \$0.85 settlement rate with U.S. carriers for the past 14 years -- when the average U.S. settlement rate with all countries has fallen from \$0.70 in 1987 to \$0.16 today, and contrary to longstanding Commission policies and ITU requirements for rates "consistent with relevant cost trends." Guyana's settlement rate is the highest in the Caribbean region, where the large majority of countries have now negotiated benchmark rates with U.S. carriers. The Commission should deny ATN's unfounded request to be rewarded for this intransigence by maintaining above-benchmark rates with U.S. carriers for a further period.

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CONCERT GLOBAL NETWORK SERVICES LTD.**

Pursuant to the *Public Notice* issued by the Commission on July 17, 2001, AT&T Corp. ("AT&T") and its affiliates Concert Global Networks USA L.L.C. and Concert Global Network Services Ltd. (collectively "Concert") submit these comments on the petition by Atlantic Tele-Network, Inc. ("ATN"), the majority owner of Guyana Telephone & Telegraph Ltd. ("GT&T"), for waiver of the benchmark settlement rate for service on the U.S.-Guyana route. ATN's petition meets none of the well-established requirements for a waiver of Commission rules. It shows no special circumstances warranting such a waiver, nor does it demonstrate that an exemption would serve the public interest or be consistent with the policies underlying the *Benchmarks Order*. The waiver request should accordingly be denied.

I. THE COMMISSION AND THE D.C. CIRCUIT HAVE ALREADY HELD THAT U.S. CONSUMERS SHOULD NOT BE FORCED TO SUBSIDIZE FOREIGN UNIVERSAL SERVICE PROGRAMS.

Petitioner ATN seeks a waiver of the \$0.23 benchmark settlement rate for Guyana for five years, or until Guyana's teledensity reaches 23, "to ensure that network expansion and

universal service in Guyana are not unduly disrupted by the implementation of the benchmark settlement rates.” (Petition, p. 1.) ATN contends (at i) that GT&T’s network expansion in Guyana is “funded heavily from settlement revenues” and (p. 14) that “[d]espite nearly worldwide reliance on universal service mechanisms of one form or another, Guyana will no longer be able to rely on revenues from international settlement rates on the U.S. route to fund network expansion and infrastructure investment should the benchmark rate become effective on January 1, 2002.”

ATN further claims (p. 16) that “grant of the requested waiver would serve the public interest because a well-developed global telecommunications network, which provides the telecommunications infrastructure necessary to support international commerce and trade, is crucial for the FCC to accomplish its statutory mandate.” Petitioner’s core contention in support of its request for an exemption from benchmarks, therefore, is that GT&T is entitled to continue to charge U.S. carriers above-cost settlement rates, requiring U.S. consumers to pay high calling prices, in order to fund its network expansion in Guyana. According to ATN (p. 29), such a waiver would “serve the public interest in promoting universal service.”

These arguments are no different from those repeatedly made by ATN’s controlled subsidiary, GT&T, and by many other foreign monopoly carriers, in opposition to the proposed settlement rate benchmarks before the Commission in 1997, and in support of their subsequent efforts to overturn the *Benchmarks Order* before the D.C. Circuit Court of Appeals in

1998 and 1999. On each occasion, their arguments were rejected, and the same disposition is required here.¹

1. The *Benchmarks Order* Determined That Foreign Universal Service Subsidies Financed Disproportionately From U.S. Settlements Payments Are Contrary to the U.S. Public Interest.

GT&T's Reply Comments in the benchmarks rulemaking asserted that "foreign countries are entitled to support universal service through settlement revenues" and that the proposed benchmarks would bring "severe adverse consequences for any foreign country whose carriers use settlement revenues to fund domestic services and infrastructure development."² Other foreign monopoly carriers also made similar claims in opposition to the proposed benchmarks -- all of which were fully addressed and rejected by the Commission's *Benchmarks Order*.

In a detailed rebuttal that also refutes ATN's "public interest" claims here, the Commission emphatically "disagree[d] with commenters who argue[d] foreign carriers [were] entitled to require that universal service requirements be financed disproportionately through settlements revenues."³ Instead, the Commission emphasized that universal subsidies should be "nondiscriminatory and transparent," as required by the procompetitive regulatory principles set

¹ ATN has previously contended it should be exempt from proportionate return requirements because of its proposed investments in Guyana telecommunications infrastructure -- a claim that the Commission and the D.C. Circuit had no difficulty in rejecting as contrary to the U.S. public interest in preventing whipsawing by monopoly foreign carriers. See *Atlantic Tele-Network, Inc. v. FCC*, 59 F. 3d 1384 (D.C. Cir 1995) (upholding Commission rejection of ATN's application for review of Bureau order imposing Section 214 condition requiring proportionate return).

² *International Settlement Rates*, IB Docket No. 96-261, Reply Comments of Guyana Telephone & Telegraph Limited, filed Mar. 31, 1997, at 12-13.

³ *International Settlement Rates*, 12 FCC Rcd. 19806, 19877 (1997) ("*Benchmarks Order*").

forth in the WTO Reference Paper.⁴ The Commission found that “[h]idden subsidies, such as those contained in settlement rates and subsidies borne disproportionately by one service, or in the case of settlement rates, by consumers from net payer countries, are not consistent with these principles and cannot be sustained in a competitive global market.”⁵

The Commission specifically dismissed claims by GT&T and other foreign carriers – once again repeated here -- that foreign universal service programs are no different from U.S. universal service subsidies. It found those comparisons invalid because, unlike foreign programs, U.S. domestic universal service policies “rely on explicit and transparent funding mechanisms” and are “based on and use end user telecommunications revenues in the United States, not settlements revenues paid by foreign carriers.”⁶

2. The *Benchmarks Order* Rejected Foreign Carrier Requests to Maintain the Status Quo To Assist Countries Relying on Excessive Settlement Rates.

The Commission was fully aware that settlement rate reform would “require many carriers, especially those in developing countries to make painful adjustments.”⁷ But it specifically rejected arguments -- again no different from those made here -- that the difficulty of transitioning to more cost-based settlement rates “should be avoided by allowing U.S. carriers to maintain the status quo in the international settlement rate system.”⁸ The Commission’s

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 19877-78.

⁷ *Id.* at 19878.

⁸ *Id.* at 19874.

paramount concerns were “to fulfill our duty to ensure reasonable rates for U.S. consumers” and to “promote competition in the United States market by using settlement rate benchmarks to remedy anticompetitive conditions in the international marketplace.”⁹ It also determined that settlement rate reform “will allow consumers in *all* countries to receive higher quality service, more service options, and lower rates as accounting rates are reduced to a more cost-based level.”¹⁰ Such reform would accordingly “benefit every carrier that provides international services by stimulating growth of those services.”¹¹

The Commission also rejected these concerns because it found settlements payments were “no longer a stable source of funding for network infrastructure development” in the changing global telecommunications market.¹² There was “widespread agreement” that “open and competitive markets that welcome private capital offer a more reliable and sustainable means to finance infrastructure development than the traditional accounting rate system.”¹³ Additionally, “other public sources of funding and technical assistance” were also available, such as the World Bank, the Inter-American Development Bank, and the ITU.¹⁴

Nevertheless, the Commission took the concerns over settlement rate reductions expressed by many developing countries into account in determining how it would calculate and

⁹ *Id.* at 19809.

¹⁰ *Id.* at 19810 (emphasis added).

¹¹ *Id.* See also, *id.* at 19878 (predicting that increased traffic flows would provide increased revenues from both collection and settlements revenues).

¹² *Id.* at 19875.

¹³ *Id.*

¹⁴ *Id.* at 19876.

implement benchmark rates.¹⁵ To begin with, rather than average all individual country tariff component prices into a single benchmark applicable to all countries, the *Benchmarks Order* established different categories based on economic development levels, with less developed countries receiving the highest benchmark rate of \$0.23, despite the lack of any evidence that the costs of terminating international calls in these countries were higher than elsewhere. The Commission explained: “Specifically, we are concerned that calculating one benchmark that applies to all countries would disproportionately affect lower income countries and would not adequately take into account the difficulty many lower income countries will encounter in reducing settlement rates to a more cost-based level.”¹⁶

The Commission also recognized developing country concerns by adopting a transition schedule to benchmark rates based on countries’ level of economic development, with less developed countries receiving the longest transition periods of four and five years. It did so because “an immediate shift to cost-oriented settlement rates could create adjustment problems” for these countries.¹⁷ The Commission accordingly adopted longer transition periods for developing countries in order to “balance these competing concerns of providing time for carriers to make adjustments and expeditiously reducing rates to a more cost-based level.”¹⁸

¹⁵ *Id.* at 19857, 19879.

¹⁶ *Id.* at 19856.

¹⁷ *Id.*

¹⁸ *Id.* at 19883-84.

Thus, far from being an “unintended consequence,” as alleged by ATN’s anonymous “white paper”,¹⁹ the Commission anticipated that developing countries would face adjustment problems in adopting benchmark rates and responded to those concerns by structuring benchmarks requirements for those countries to minimize any adverse effects. But the Commission refused to eliminate benchmarks altogether, as ATN requests here, since it determined that U.S. consumers should not be required to pay the unreasonably high rates required to maintain existing subsidies to foreign carriers -- which is exactly what ATN again seeks to maintain.

3. The D.C. Circuit Upheld the *Benchmarks Order* “in its Entirety” Over GT&T’s Same Objections.

After failing to persuade the Commission of their entitlement to receive continued huge subsidies from U.S. consumers, GT&T and many other monopoly foreign carrier petitioners repeated their arguments before the D.C. Circuit. They contended in support of their appeal of the *Benchmarks Order* that “the FCC’s rate prescriptions inherently limit the ability of foreign governments and carriers to use settlement revenues to promote legitimate foreign social policies, such as universal service.”²⁰ Indeed, the very first sentence of the Joint Brief of Intervenors from Developing Countries in support of that appeal stated: “The FCC’s rate

¹⁹ Petition, Appendix B. This anonymous “white paper,” which ATN attaches in an attempt to lend a patina of credibility to its petition, is merely further argument by counsel. Moreover, as described below, because it requests benchmark exemptions for *all* low income countries using settlement rates for infrastructure investment, the “white paper” makes clear that no special circumstances apply to Guyana that are not equally applicable to many other countries.

²⁰ Joint Petitioners’ brief at 35, *Cable & Wireless PLC v. FCC*, 166 F. 3d. 1224 (D.C. Cir. 1999).

prescriptions would reduce significantly the settlement revenues used to fund universal service in developing countries.”²¹ The D.C. Circuit, however, upheld the *Benchmarks Order* “in its entirety,” rejecting all these arguments.²²

GT&T then took the further step of requesting a rehearing of its appeal before the D.C. Circuit, contending that the \$0.23 benchmark rate would have a “devastating impact” by “tak[ing] hundreds of millions of dollars from countries like Guyana, where the average citizen makes less than \$726 per year” and would require “a 1000% increase in domestic Guyana telephone rates to compensate for GT&T’s lost settlement revenues under the FCC’s benchmarks regime.”²³ The D.C. Circuit again rejected those arguments and denied the petition *per curiam*.²⁴

II. ATN SHOWS NO SPECIAL CIRCUMSTANCES OR PUBLIC INTEREST BENEFITS WARRANTING ANY EXEMPTION FROM THE *BENCHMARKS ORDER*.

GT&T’s parent now repeats yet again the same facts and arguments in a petition that meets none of the requirements for a waiver of Commission rules. A waiver applicant bears the burden of showing special circumstances warranting a deviation from the rule, that an exemption would serve the public interest and that an exemption would be consistent with the

²¹ Joint Brief of Intervenors from Developing Countries at 7, *Cable & Wireless PLC v. FCC*, 166 F. 3d. 1224 (D.C. Cir. 1999).

²² *Cable & Wireless PLC v. FCC*, 166 F. 3d. at 1224.

²³ Petition for Rehearing and Suggestion for Rehearing *In Banc* at 5, *Cable & Wireless PLC v. FCC*, No. 97-1612, filed Feb. 25, 1999 (emphasis in original).

²⁴ Order, *Cable & Wireless PLC v. FCC*, No. 97-1612, Mar. 11, 1999 (*per curiam*).

policies underlying the rule.²⁵ But rather than showing the existence of special circumstances warranting any exemption from the *Benchmarks Order*, ATN puts forward no material facts or circumstances not already addressed by that order. Indeed, ATN underscores the absence of any special circumstances here by making clear that its requested waiver would apply broadly to many other countries.

ATN also makes no showing that a benchmark waiver for Guyana would serve the public interest or be consistent with the policies underlying the *Benchmarks Order*. Indeed, even the authority cited by ATN makes clear that the Commission's universal service responsibilities are national rather than global in scope, and therefore do not require U.S. consumers to subsidize infrastructure development in foreign countries. Moreover, a benchmark waiver for Guyana would not be consistent with the policies underlying the *Benchmarks Order* because it would obstruct the central benchmarks policy objective of reducing settlement rates with all countries to benchmark levels expeditiously.

In essence, ATN's petition is not a legitimate waiver request but is rather nothing more than an effort to re-argue yet again the basic premises of the *Benchmarks Order*. It merely repeats arguments already rejected by the Commission and D.C. Circuit, although such broad-brush attacks on Commission rules do not constitute "special circumstances" or otherwise support a waiver. ATN's petition should be rejected promptly.

²⁵ See *Telefonica Large Distancia de Puerto Rico, Inc.*, 14 FCC Rcd. 19380, 19381 (1999), citing *WAIT Radio v. FCC*, 418 F. 2d 1153 (D.C. Cir. 1969). See also, *Dominion Video Satellite, Inc.*, 14 FCC Rcd. 8182, 8184 (1999) (waiver relief must not undermine the policy objective of the rule in question and must otherwise serve the public interest).

1. ATN Identifies No Material Facts or Circumstances Not Anticipated by the Benchmarks Order.

The chief authority cited by ATN states that the Commission may exercise its discretion to waive a rule where there are “particular facts” making strict compliance with the general rule inconsistent with the public interest.²⁶ Although an applicant for a waiver is thus required to “plead with particularity the facts and circumstances which warrant such action,” ATN puts forward no material facts or circumstances in support of its request that were not previously presented to the Commission by ATN’s controlled subsidiary, GT&T, in opposition to the *Benchmarks Order*.²⁷

ATN contends (p. 2) that GT&T has invested “more than \$140 million” in network infrastructure in Guyana since 1991, or about half the cumulative total U.S. settlements outpayment to Guyana during that period.²⁸ GT&T similarly claimed in opposition to the *Benchmarks Order* that it had invested \$90 million in Guyana infrastructure, or about half the cumulative U.S. settlements outpayment to Guyana from 1991 through 1997.²⁹ ATN asserts the existence of similar resulting improvements to the Guyanese network as those claimed by GT&T in 1997,³⁰ and also contends, as GT&T has repeatedly claimed before, that replacing settlements

²⁶ *Mescalero Apache Telecom, Inc.*, 16 FCC Rcd. 1312 (2001), 2001 FCC LEXIS 363, *9.

²⁷ *WAIT Radio*, 418 F. 2d at 1157, quoting *Rio Grande Radio Fellowship Inc. v. FCC*, 406 F. 2d 664 (D.C. Cir. 1968). See also, *Ralph C. Wilson Industries, Inc.*, 91 F.C.C. 2d 127, 138 (1982) (denying waiver petition based on arguments that had been “repeatedly rejected by this Commission”).

²⁸ See FCC 43.61 reports.

²⁹ *International Settlement Rates*, IB Docket No. 96-261, GT&T Reply Comments, filed Mar. 31, 1997, at 1; FCC 43.61 reports.

³⁰ *Compare* Petition at 4-7 & Prior Affidavit with *International Settlement Rates*, IB Docket No. 96-261, GT&T Reply Comments, filed Mar. 31, 1997, at 1 & Attachments.

revenues lost from implementation of the *Benchmarks Order* would require “at least a 1000 percent increase in domestic rates.”³¹

ATN claims herein (p. 7) that “GT&T will be able to continue expanding and upgrading the telecommunications network in Guyana only if it continues to receive its current revenue stream from international settlement rates.” But that is the exact claim that GT&T made before in opposing the *Benchmarks Order*. GT&T contended that the benchmarks “would deprive GT&T and other carriers in developing countries of the funds they need to implement on-going infrastructure development projects and to assure universal service.”³²

However, ATN now reports that benchmarks will affect GT&T significantly *less* adversely than originally estimated. ATN contends (p. 22) that GT&T would lose “about \$25 million per year” from implementing benchmarks, while GT&T previously stated it would lose “upwards of \$35 million annually.”³³

In any event, there can be no doubt that all the material facts and circumstances concerning the potential impact of benchmarks on GT&T and its network investment in Guyana were presented to the Commission in the *Benchmarks Order* rulemaking and were fully taken into account by the Commission. As described above, the *Benchmarks Order* repeatedly

³¹ Compare Petition at 22 (GT&T would have to require at least a 1000 percent increase in domestic rates”) with *International Settlement Rates*, IB Docket No. 96-261, GT&T Reply Comments, filed Mar. 31, 1997, at iii (“FCC’s proposed benchmarks would . . . require at least a 1000% increase in domestic rates”), with Petition for Rehearing and Suggestion for Hearing In Banc at 5, *Cable & Wireless PLC v. FCC*, No. 97-1612, filed Feb. 25, 1999 (“it would take a 1000% increase in domestic Guyana telephone rates to compensate for GT&T’s lost settlement revenues”) (emphasis in original).

³² *International Settlement Rates*, IB Docket No. 96-261, GT&T Reply Comments, filed Mar. 31, 1997, at 2.

³³ *Id.* at iii.

acknowledged the adjustments that would be required by many foreign carriers, particularly those in developing countries, and established an approach to the calculation and implementation of benchmark rates specifically to address those adjustment concerns -- by providing higher rates and longer transition periods for low income countries.³⁴ However, it also expressly rejected the argument made by GT&T and many other foreign carriers that ATN now repeats here yet again - - that those same adjustment problems should require exemptions from benchmark rates.³⁵

2. ATN's Benchmark Waiver Would be Equally Applicable to Many Other Countries.

An applicant for a waiver of Commission rules must also show special circumstances that do not apply to other parties. The International Bureau recently found there were no special circumstances justifying a waiver of the Section 214 benchmark condition for TLD, since this requested waiver would have been "equally applicable" to other carriers.³⁶ The Common Carrier Bureau similarly denied a waiver request that "applie[d] broadly . . . in effect modifying the rule for the entire class of companies."³⁷ The Common Carrier Bureau

³⁴ See, e.g., *Benchmarks Order*, 12 FCC Rcd. at 19871 ("we are also cognizant of the adjustment problems a rapid transition to more cost-based settlement rates could cause for U.S. carriers' foreign correspondents"); 19875 ("We acknowledge the concerns of many commenters that settlement revenues are necessary to fund network development and universal service requirements.")

³⁵ See e.g., *id.* at 19874 ("We agree with commenters that the transition to more cost-based settlement rates will be difficult for countries and carriers that currently rely on excessive settlement rates. We disagree, however, that this difficulty should be avoided by allowing U.S. carriers to maintain the status quo in the international accounting system.").

³⁶ *Telefonica Large Distancia de Puerto Rico, Inc.*, 14 FCC Rcd. at 19381.

³⁷ *GVNW Inc./Management Petition for Declaratory Ruling, or Alternatively, a Waiver of section 36.612(a) of the Commission's Rules USF Data Collection*, 11 FCC Rcd. 13915, 13919 (1996).

emphasized that such broadly applicable changes “may only be instituted through a rulemaking proceeding.”³⁸

ATN similarly fails to show any special circumstances that are not broadly applicable to many other countries. It seeks (at iii) a waiver of the \$0.23 benchmark rate “to allow GT&T to continue *existing* network expansion and universal service programs in Guyana.” (Emphasis in original.) However, as noted by the *Benchmarks Order*, “many carriers with poor telecommunications infrastructure state that they rely on settlement revenues to finance that network development,” and there is “no doubt that reform of the international accounting rate system will require many carriers, especially those in developing countries, to make painful adjustments.”³⁹

Indeed, even ATN’s petition and attached “white paper” belie ATN’s assertion (p. 4) that “unique” circumstances apply to Guyana, and rather demonstrate that many countries would be eligible for the requested waiver. ATN’s petition acknowledges (pp. 14, 30) “nearly *worldwide* reliance on universal service mechanisms of one form or another,” and contends (p. 16) that a waiver would serve the public interest benefits of “a well-developed *global* telecommunications network.” (Emphasis added.) GT&T made the same representation to the D.C. Circuit in 1998 when it asserted that “*all* countries use long distance and international revenues to subsidize domestic services and to recover the cost of investment in domestic facilities.”⁴⁰

³⁸ *Id.*

³⁹ *Benchmarks Order*, 12 FCC Rcd. at 19858, 19878.

⁴⁰ Joint Petitioners’ Brief at 35, *Cable & Wireless PLC v. FCC*, 166 F. 3d. 1224 (D.C. Cir. 1999) (emphasis added).

The absence of any special circumstances applying to Guyana is highlighted by ATN's "white paper," which is titled "Promoting U.S. Interests Through Strategic Application of Benchmark Rates to *Low-Income Countries*" and barely mentions Guyana in all its twenty-five pages.⁴¹ Indeed, the two-page summary does not refer to Guyana at all, and instead requests (at i) "strategic exemptions" from benchmark rates for *all* low-income developing countries that "can demonstrate that they are currently using, and will continue to use, settlement rates to build their national telecommunications infrastructures and promote Internet connectivity."

ATN's "white paper" further underscores the absence of any special circumstances applying to Guyana by claiming that other low-income developing countries would suffer the very same adverse effects from benchmarks that ATN's petition contends would be suffered by Guyana. (*Compare* White Paper at 14, *with* Petition at 15.) The "white paper" also claims that a waiver of the benchmark for other low-income developing countries would provide similar public interest benefits to those claimed by ATN in support of a waiver for Guyana. (*Compare* White Paper at 15-25, *with* Petition at 16-18, 22-23.) Thus, contrary to ATN's assertion (p. 3) that a benchmark waiver for Guyana would have "no effect" on "other destinations," its own petition and "white paper" make abundantly clear that no special circumstances apply to Guyana that are not equally applicable to many other countries.

ATN fails to remedy this fatal deficiency in its petition when it seeks (p. 4) to limit waiver eligibility to countries that could show "a consistent pattern over many years of using settlement revenues to fund infrastructure investment and network upgrades" and when it makes (p. 4) the unlikely claim that "few, if any countries other than Guyana can demonstrate" such "a pre-existing commitment to network expansion and universal service." Many

⁴¹ Emphasis added.

developing countries and their carriers submitted comments in the 1997 benchmarks proceeding stating “that in many developing countries, settlements revenues are used to fund universal service programs and network infrastructure development.”⁴² Indeed, many developing country carriers, in a brief submitted by petitioner’s lawyers, similarly represented to the D.C. Circuit in 1998 that “many developing countries” rely on settlements revenues to support universal service programs.⁴³ Nothing in those comments suggested that this claimed usage of settlements revenue was a recent development.

Finally, there would be no reasonable basis for distinguishing between countries like Guyana claiming to have made such expenditures for 10 years and those that may have done so for 9, 8 or even fewer years. Indeed, ATN’s own “white paper” (at ii) concedes this point by requesting waiver eligibility for all countries that “are using, and will continue to use” settlements revenues to fund network expansion.

3. **ATN Wrongly Claims a Waiver Would not Undermine Benchmark Rates.**

ATN acknowledges (pp. 24-28) that the policies established by the *Benchmarks Order* have been remarkably successful, with benchmark rates already accepted by carriers in most high and middle income countries, significant declines in the average settlement rate paid by U.S. carriers and in U.S. settlement outpayments, decreases in international calling prices, and “dramatic[]” increases in U.S. outbound traffic. But ATN wrongly argues (pp. 23-24) that

⁴² 12 FCC Rcd. at 19872. For example, GT&T informed the Commission in the *Benchmarks Order* rulemaking that “in many developing countries international service is the only traffic stream that is sufficiently robust to bear a significant share of universal service costs.” *International Settlement Rates*, IB Docket No. 96-261, GT&T Reply Comments, filed Mar. 31, 1997, at 14.

⁴³ Joint Brief of Intervenors from Developing Countries at 2, *Cable & Wireless PLC v. FCC*, 166 F. 3d 1224 (D.C. Cir. 1999).

because benchmarks have been successfully implemented for some countries they may be waived for Guyana without “undermin[ing] the goals of the *Benchmark Order*.”

ATN fails to recognize that the *Benchmarks Order* governs settlement rates for *all* countries, including Guyana. Even if ATN was correct in its claim (p. 28) -- which it is not -- that such a waiver would have “no effect” on other routes, there is no reason why U.S. consumers, particularly “the substantial Guyanese immigrant population residing in the United States” (Petition, p. 23), should pay high rates for calls on the U.S.-Guyana route because of GT&T’s unreasonably high settlement rates. Equally flawed is ATN’s reasoning that its proposal is consistent with benchmark goals because there will be “no[] increase” in settlement rates and calling prices. What ATN ignores is the fact that U.S. consumers are also significantly harmed by the denial of price decreases they would otherwise receive.

In a further display of faulty logic, ATN argues that international traffic volumes may be increased more effectively by expanding foreign networks than by reducing settlement rates. ATN’s “white paper” even claims (p. 20) that there were increases in outbound traffic of 18-76 percent from the United States to seven countries in 1998-99 resulting from increases in teledensity in those countries. Significantly, ATN’s “white paper” makes no reference to U.S. carriers’ settlement rate reductions with many of those countries, which ranged from 19-76 percent in that same period. Also, U.S. outbound traffic to Guyana previously fell by 31 percent in 1996-97 and by a further 22 percent in 1997-98, notwithstanding any network expansion in Guyana during that period.⁴⁴ In any event, the Commission’s policy goal is not to stimulate outbound traffic but to reduce prices for U.S. consumers, consistent with its statutory mandate to ensure reasonable rates. Increases in outbound traffic volumes stimulated by these lower prices

⁴⁴ See FCC 43.61 reports.

merely demonstrate that foreign carriers will suffer little or no reduction in total payments from U.S. carriers because of the implementation of benchmark rates.⁴⁵

4. ATN Identifies No Public Interest Benefits Justifying the Waiver of Benchmark Rates.

Contrary to ATN's amazing assertion (p. 16) that the Commission's "statutory mandate" requires U.S. consumers to subsidize the "global telecommunications network" in foreign countries, the *Benchmarks Order* makes clear, and the D.C. Circuit has affirmed, that there is no such mandate. The absence of any such mandate is further demonstrated by ATN's own leading authority, the Commission's recent decision in *Mescalero Apache Telecom*.⁴⁶

In that order, the Commission allowed a U.S. local carrier to receive a higher level of universal service support than allowed by Commission rules for acquired exchanges in order to "increase access to telecommunications services on the Reservation consistent with our statutory goal of preserving and advancing universal service."⁴⁷ As the Commission emphasized in that order, quoting language from Section 254(b) of the Telecommunications Act, this waiver was "also consistent with our mandate to ensure that consumers in all regions of the nation . . . have access to telecommunications and information services."⁴⁸ Significantly, neither the statutory language nor that order refers to any mandate to ensure that consumers in foreign

⁴⁵ See, e.g., Letter dated Jul. 20, 2000 to Samuel Martin, Chief Executive Officer Telecommunications Services of Trinidad and Tobago Limited, from Ari Fitzgerald, Deputy Bureau Chief, International Bureau ("we have examined this issue and found that, in the overwhelming majority of cases, payments from U.S. carriers actually increased after settlement rates were reduced because traffic volumes from the United States increased").

⁴⁶ *Mescalero Apache Telecom, Inc.*, 16 FCC Rcd. 1312 (2001), 2001 FCC LEXIS 363, *19.

⁴⁷ *Id.* at *19 (emphasis added).

⁴⁸ *Id.*

countries have access to telecommunications and information services, and the Commission made quite clear in the *Benchmarks Order* that its universal service mandate does not extend to the development of foreign telecommunications infrastructure.

Far from being desirable U.S. public policy, as ATN mistakenly contends, there is simply no reason why U.S. consumers should be required to carry the huge and potentially unlimited burden of subsidizing the expansion of telecommunications infrastructure throughout the world. The Commission has expressly rejected these foreign carrier claims and has found that disproportionate U.S. consumer subsidies for foreign universal service programs and infrastructure investment are *harmful* to the U.S. public interest.

There is certainly no basis to ATN's claims that U.S. policies promoting the development of the Internet, U.S. bilateral or multilateral commitments to Guyana, or any indirect benefits to U.S. equipment manufacturers require U.S. consumers to bear such a massive obligation, and ATN cites no statutory or treaty language to that effect. Rather than endorse continued high U.S. consumer subsidies for foreign carriers, as ATN erroneously contends (pp. 18-20), the Bridgetown Declaration encourages reliance on competition and private investment, in accordance with the Commission's *Benchmark Order* finding that there is now "wide agreement" that "open and competitive markets that welcome private capital offer a more reliable and sustainable means to finance infrastructure development than the traditional accounting rate system."⁴⁹

Instead of encouraging pro-competitive policies, the benchmark waivers requested here would impede this result by encouraging foreign countries to maintain the status quo and even to increase their reliance on U.S. consumer subsidies. This is admitted by ATN's "white

⁴⁹ *Benchmarks Order*, 12 FCC Rcd. at 19875.

paper,” which recognizes (at ii) that benchmark waivers would “create incentives” for countries “to continue using (*and in some cases to increase the use of*) settlement revenues” for domestic network investment. (Emphasis added.)

5. ATN Shows No Adverse Impact from Benchmark Rates.

ATN makes no showing that it qualifies for the only two exceptions to benchmark rates and transition periods allowed by the *Benchmarks Order*. Those exceptions are: (1) where the benchmarks “do not permit the carrier to recover the incremental costs of providing international termination service;”⁵⁰ and (2) where “a reduction of 25 percent of the difference between the current settlement rate and the applicable benchmark will entail a loss of greater than 20 percent of the country’s telecommunications revenue” (in which case, the Commission will consider providing additional transition time).⁵¹

Rather than put forward evidence showing that benchmark rates are below its termination costs, ATN simply asserts that it has a right to continue to receive above-cost settlement rates to subsidize its domestic infrastructure. ATN also provides no support for its claim (p. 11) that compliance with benchmarks would have a revenue impact for Guyana “on a par” with the revenue losses required for the second exemption to benchmarks (*i.e.*, that a reduction of 25 percent of the difference between the current rate and the benchmark rate would lose more than 20 percent of the country’s telecommunications revenue). In fact, the only reason why compliance with benchmarks will now require a “73 percent reduction” (Petition, p. 11) is GT&T’s refusal to accept reductions in the \$0.85 settlement rate it has steadfastly maintained

⁵⁰ *Benchmarks Order*, 12 FCC Rcd. at 19842.

⁵¹ *Id.* at 19888.

since 1987,⁵² contrary to longstanding Commission policies and ITU requirements for the negotiation of rates that are “consistent with relevant cost trends.”⁵³

Guyana’s settlement rate is the highest in the Caribbean region, where the large majority of countries have now negotiated benchmark rates with U.S. carriers. Because of GT&T’s intransigence, U.S. carriers have been unable to negotiate even glidepath rates with GT&T, which would have provided proportionate reductions from \$0.85 to \$0.23 over four years.⁵⁴ And ATN makes no showing that compliance with such a reduction would entail a loss of more than 20 percent of Guyana’s telecommunications revenues, as required under the *Benchmarks Order* before additional transition time may be considered.

Indeed, even assuming that such a showing was relevant, which it is not, ATN presents no evidence that compliance with benchmark rates would have any material adverse impact on GT&T’s infrastructure development in Guyana. The Commission has emphasized that the benchmarks “generally are conservative,” particularly where “some developing countries with recent significant infrastructure development could have more technologically advanced telecommunications equipment.”⁵⁵ Guyana, with its “completely digital network” (Petition, p.

⁵² See *IMTS Accounting Rates of the United States, 1985-2001*, Jul. 1, 2001, <http://www.fcc.gov/ib/td/pf/arts.web.xls>. Guyana has refused settlement rate reductions for a longer period than virtually all other countries. See, *id.* Since 1987, the average U.S. settlement rate with all countries has declined from \$0.70 to \$0.16 today. *Id.*

⁵³ See *Regulation of International Accounting Rates*, 6 FCC Rcd. 3552, 3556 (1991) (U.S. carriers should “negotiate with their foreign correspondents accounting rates that are consistent with relevant cost trends”); *Benchmarks Order*, 12 FCC Rcd. at 19951 (citing ITU requirements for accounting rates that are “cost-oriented” and “take into account relevant cost trends”).

⁵⁴ Guyana’s settlement rate with U.S. carriers is also highly discriminatory, since it has a much lower rate of \$0.31 with Trinidad & Tobago. See ATN Appendix A at 17.

⁵⁵ *Benchmarks Order*, 12 FCC Rcd. at 19841.

5), is just such a country, where termination costs are certainly no higher than the 6-9 cents estimated by the *Benchmarks Order*, and likely are below that level.⁵⁶

Because of the increased U.S. outbound traffic stimulated by lower settlement rates, the adoption of benchmark rates may in fact result in higher U.S. settlements outpayments to Guyana.⁵⁷ But even assuming that adoption of the \$0.23 benchmark rate would do no more than continue the 21 percent increase in the volume of U.S.-outbound traffic with Guyana shown in 1998-99,⁵⁸ it will still provide GT&T with approximately \$9 million per year in U.S. outpayments in excess of the payments that GT&T would receive at a very conservative cost-based rate of 9 cents per minute. Therefore, under the benchmark rate, GT&T will receive payments from U.S. carriers that will not only cover its termination costs but will also provide it with more than 60 percent of the average annual amount of \$14 million ATN claims to have invested since 1991 (\$140 million over 10 years). Indeed, since a more realistic cost-based rate in today's international market is no higher than 5 cents per minute,⁵⁹ GT&T will in fact receive payments from U.S. carriers under the benchmark rate that will not only cover its termination costs but will also provide it with an additional \$11.3 million per year (*i.e.*, more than 80 percent of that annual investment amount).

⁵⁶ *Id.* at 19866. ATN's web-site states that "[n]early 90% of Guyana's estimated 750,000 inhabitants live on a narrow strip of land bordering the Atlantic Ocean." <http://www.atni.com>.

⁵⁷ *See, e.g.*, fn. 45, *supra*.

⁵⁸ *See* FCC 43.61 reports.

⁵⁹ *See, e.g.*, *AT&T & Concert Objection to WorldCom International Settlements Policy Modification Request for a Change in the Account Rate for International Message Telephone Service with Mexico*, ARC-MOD-20010530-00123, filed Jun. 20, 2001, Attachments A&B (showing that cost-based rates for U.S. calls to Mexico are no higher than 3.26 cents per minute).

The *Benchmarks Order* found that the benchmarks are “still above the cost of providing international termination service” and therefore “include a generous contribution that could be applied to fund universal service and other goals.”⁶⁰ The facts alleged by ATN demonstrate the accuracy of the Commission’s finding.

⁶⁰ 12 FCC Rcd. at 19849. Since ATN purchased GT&T for \$32 million in 1991 (comprising the payment of \$16 million and assumption of \$16 million in debt, *see* ATN Appendix A at 3), GT&T has received \$272 million in net settlements payments from U.S. carriers, or more than \$240 million in excess of the net settlements payments it would have received at a settlement rate of 9 cents (rather than the actual rate for that period of 85 cents). *See* FCC 43.61 reports. Even if ATN is correct that GT&T has invested \$140 million in infrastructure during this period, U.S. consumers have still paid GT&T approximately \$100 million in above-cost subsidies in excess of that amount since January 1991 -- or more than three times ATN’s original investment in GT&T.

CONCLUSION

For the above-mentioned reasons, ATN's petition meets none of the requirements for a waiver of Commission rules and should accordingly be denied.

Respectfully submitted,

AT&T CORP. AND ITS AFFILIATES
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CERTIFICATE OF SERVICE

I, Theresa Donatiello Neidich, do hereby certify that on this 7th day of September, 2001, a copy of the foregoing "Comments of AT&T Corp. and its Affiliates Concert Global Networks USA L.L.C. and Concert Global Network Services Ltd." was served by first class U.S. mail, postage prepaid, or by hand-delivery upon the parties on the attached service list:


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